United Nations CED/C/MNE/1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
13 March 2014

Original: English

Committee on Enforced Disappearances

Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention

Reports of States parties due in 2013

Montenegro*

[Date received: 30 January 2014]

* The present document is being issued without formal editing.

GE.14-41616

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I. Introduction

1. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the General Assembly of the United Nations on 20 December 2006. The Convention was opened for signature on 6 February 2007.

2. Montenegro ratified the International Convention for the Protection of All Persons from Enforced Disappearance by passing the Law on Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (*Official Gazette of Montenegro – International Treaties* 8/2011) and became a State party to the Convention by depositing instruments of ratification on 20 October 2011. By ratifying the Convention, Montenegro joined the ranks of countries committed to implementing the Convention through their national legislation and taking all necessary measures to prevent and punish enforced disappearances.

3. In accordance with article 3 of the Law on Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, at the time of deposit of its instruments of ratification, Montenegro made the following declarations: pursuant to article 31, paragraph 1, Montenegro recognized the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by Montenegro of provisions of this Convention; pursuant to the provisions of article 32, Montenegro recognized the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under the Convention.

4. In accordance with article 29 of the Convention, Montenegro has undertaken to submit to the Committee on Enforced Disappearances, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under the Convention, within two years after the entry into force of the Convention.

5. This initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance has been prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention, adopted by the Committee at its second session (26–30 March 2012).[1] The report has been prepared by the Ministry of Justice in cooperation with the Supreme Court of Montenegro, Ministry of Interior, Ministry of Defence, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Foreign Affairs and European Integration, Police Administration and Judicial Training Centre.

II. General legal framework under which enforced disappearances are prohibited

6. Montenegro is a Member State of the United Nations, Council of Europe and other international organizations and regional initiatives, as well as a State party to the key international human rights treaties, including: the International Covenant on Civil and Political Rights (together with the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty), International Covenant on Economic, Social and Cultural Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (together with its Optional

[1] CED/C/2.

Protocol), International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women (together with its Optional Protocol), Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Convention on the Rights of Persons with Disabilities (together with its Optional Protocol), Convention on the Prevention and Punishment of the Crime of Genocide, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, International Convention on the Suppression and Punishment of the Crime of Apartheid and International Convention against Apartheid in Sports. Furthermore, Montenegro was among the first countries to sign the International Convention for the Protection of All Persons from Enforced Disappearance, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

7. Montenegro is a State party to 69 International Labour Organization conventions.

8. Montenegro cooperates actively with the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) in the fields of protection of human and minority rights and fundamental freedoms, promotion of the rule of law and further democratization of society. It has ratified a number of Council of Europe human and minority rights conventions, including the most significant one – the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

9. As a State party to the key international human rights treaties, Montenegro clearly demonstrates its support to the attainment of their goals, and also actively participates in the creation and implementation of new standards for the promotion and protection of human rights.

10. Montenegro is a candidate country for membership in the European Union. In this context, Montenegro implements a range of activities in cooperation with the European Commission, the delegation of the European Union in Montenegro, as well as through bilateral activities with the member States of the European Union. These obligations are defined by a number of documents, including: the Stabilization and Association Agreement, Action Plan for Implementation of Recommendations from the European Partnership, Action Plan for Implementation of Recommendations from the Updated European Partnership, National Programme for Integration of Montenegro into the EU 2008–2012, Action Plan for Chapter 23 – Judiciary and Fundamental Rights, Action Plan for Chapter 24 – Justice, Freedom and Security, etc.

11. A special focus of the comprehensive reform being implemented in Montenegro in this context is the promotion of the rule of law and protection of human rights. The reform is aimed at improving the legal framework with a view to adopting the best standards and achievements of modern society, but also at strengthening institutional capacities, media freedoms and promoting human rights in every segment of society.

12. The Constitution of Montenegro[2] guarantees human rights and freedoms. Rights and freedoms are realized on the basis of the Constitution and ratified international agreements (art. 17). Guaranteed human rights and freedoms may be restricted only by law, within the limits prescribed by the Constitution and to such an extent as is necessary to attain the purpose for which the restriction is allowed in an open and democratic society. The

[2] *Official Gazette of Montenegro* 1/2007, 38/2013.

restrictions may not be introduced for any purpose other than those for which they have been prescribed (art. 24). During the declared state of war or emergency, the exercise of specific human rights and freedoms may be derogated from, to a necessary extent. The restrictions may not be applied on the grounds of sex, national origin, race, religion, language, ethnic or social origin, political or other beliefs, property or any other personal status. No restrictions may be applied to the following rights: the right to life, right to legal remedy and legal aid; right to dignity and respect of a person; right to a fair and public trial and the principle of legality; presumption of innocence; right to defence; right to compensation for illegal or wrongful deprivation of liberty and wrongful conviction; freedom of thought, conscience and religion; right to marry. The following prohibitions may not be derogated from: the prohibition of provoking or encouraging hatred or intolerance; prohibition of discrimination; prohibition of possibility of a defendant being tried and convicted repeatedly on the basis of the same criminal offence (*ne bis in idem*); forced assimilation. Measures of restriction may not operate beyond the state of war or emergency (art. 25).

13. The Constitution provides that Montenegro guarantees the dignity, security, inviolability of the physical and mental integrity of the man, and his privacy and individual rights. Under the Constitution, no one may be subjected to torture or inhuman or degrading treatment or held in slavery or servitude (art. 28).

14. Article 29 of the Constitution provides that everyone has the right to liberty of person. Deprivation of liberty is allowed only for reasons and in accordance with a procedure prescribed by law. A person deprived of liberty must be notified immediately in his language or a language he understands of the reasons for deprivation of liberty and at the same time advised that he has the right to remain silent. At the request of a person deprived of his liberty, the authority must immediately inform a person chosen by the person deprived of his liberty of the deprivation of liberty. A person deprived of liberty has the right to have a defence counsel of his own choosing to be present at his questioning. Unlawful deprivation of liberty is punishable.

15. Under article 30 of the Constitution, a person reasonably suspected of having committed a criminal offence may be detained and kept in detention only on the basis of a decision of the competent court, if this is necessary for the smooth conduct of criminal proceedings. A detained person must be served with a reasoned decision at the time of being remanded to detention and no later than 24 hours after being remanded to detention. A detained person has the right make an appeal against the decision on detention, and the court must decide this appeal within 48 hours. The Constitution provides that detention must not last longer than strictly necessary and sets time limits for detention under which detention on the basis of a decision of the first-instance court may last no longer than three months from the day when the person was remanded to detention, whereas this time may be extended for an additional three months by a decision of a higher court. If no charges are brought by the expiry of these time limits, the defendant must be released. Detention of minors may last no longer than 60 days.

16. In accordance with article 31 of the Constitution of Montenegro, everyone whose liberty has been restricted or is serving a penalty is guaranteed respect for human personality and dignity in criminal or other proceedings. The Constitution prohibits violence against and inhuman or degrading treatment of persons deprived of liberty or persons whose liberty is restricted, as well as forced confessions and statements. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (art. 32). Everyone is guaranteed the right to defence including in particular: to be informed promptly, in a language which he understands of the charge against him; to have adequate time for the preparation of defence and to defend himself in person or through legal assistance of his own choosing (art. 37).

17. Under article 56, everyone has the right to address international organizations for protection of his rights and freedoms guaranteed by the Constitution.

18. Article 9 of the Constitution provides that ratified and published international treaties and generally accepted rules of international law are integral parts of national law, take precedence over national legislation and apply directly where their provisions govern relations differently than national legislation. This provision not only verifies the legal effect of international treaties (including the International Convention for the Protection of All Persons from Enforced Disappearance), by making them part of the national legal structure, but also signals to State authorities that domestic legislation should be brought into line with international law, particularly in the field of guaranteeing, promoting and protecting fundamental human rights and freedoms.

19. The Criminal Code of Montenegro[3] within its body of criminal offences against freedoms and rights of the man and citizen (chap. XV) establishes criminal offences of unlawful deprivation of liberty (art. 162), abduction (art. 164) and coercion (art. 165). The Criminal Code includes a group of criminal offences against humanity and other values protected under international law (arts. 426–449a) including: genocide, crimes against humanity, war crimes against civilian population, war crimes against the wounded and the sick, war crimes against prisoners of war, conspiracy and incitement to commit genocide and war crimes, failure to take measures to prevent the commission of criminal offences against humanity and other values protected by international law, etc. The Criminal Code criminalizes offences against human health (arts. 287–302), including wrongful provision of medical aid, unlawful performance of medical experiments and clinical trials etc.

20. The Code of Criminal Procedure[4] aims to ensure full procedural protection of human rights and fundamental freedoms guaranteed by the Constitution and international instruments and to strike a balance between the two requirements that must be met by every proceedings – the efficiency of criminal procedure on the one side, and the best possible protection of human rights and freedoms, on the other side. One of the fundamental rules enshrined in the Code is the prohibition of the use of threats and violence against the suspect, the defendant or other participant to proceedings and the prohibition of extracting confessions through coercion, torture, inhuman or degrading treatment (art. 11). Moreover, the Code provides that no court decision may be based on evidence obtained through violations of human rights guaranteed by the Constitution and ratified international treaties and evidence obtained in violation of criminal procedure provisions, as well as on evidence that stems therefrom, and that no such evidence may be used in proceedings (art. 17). Article 154 prohibits medical interventions on the suspect, the defendant and the witness and administering of substances to these persons in order to influence their awareness and free will when giving a statement.

21. The personality and dignity of a detained person must not be offended. A detained person may be subjected only to such restrictions as are necessary to prevent fleeing and enticement of third persons to destroy, hide, alter or forge evidence or traces of criminal offences, as well as direct and indirect contacts of a detained person with witnesses, accomplices and accessories after the fact.

22. The procedure with regard to enforcement of the sentence of imprisonment is governed by the Law on Enforcement of Criminal Sanctions[5] and relevant by-laws. During

[3] *Official Gazette of the Republic of Montenegro* 70/03, 13/04, 47/06 and *Official Gazette of Montenegro* 40/08, 25/10, 32/11 and 40/13.

[4] *Official Gazette of Montenegro* 57/2009 and 49/2010.

[5] *Official Gazette of the Republic of Montenegro* 25/1994, 29/1994, 69/2003 and 65/2004 and *Official Gazette of Montenegro* 32/2011.

the enforcement of the sentence of imprisonment, offenders may be subjected only to such restrictions or forfeitures of specific rights and only to such an extent as reflect the nature and substance of the sanction and in a manner that ensures respect of the personality and human dignity of the offender. It is also prohibited and punishable to subject the sentenced person to any form of torture, abuse or degrading treatment, medical and scientific experiments. Prohibited treatments are understood to mean primarily those treatments that are disproportionate to the purpose of maintaining order and discipline within a prison unit or are unlawful and as such may lead to suffering and inappropriate restrictions of human rights. During the enforcement of the sentence of imprisonment, sentenced persons may not be treated unequally on the basis of their race, skin colour, political or other conviction, national or social origin, property, birth, education, social position or other status. Coercive measures may be applied against a sentenced person only under such conditions and in such a manner as prescribed by law and regulations enacted in furtherance of the law. Means of coercion (physical strength, separation, rubber bat, high-pressure water jets, specially trained dogs, chemical substances and firearms) may be employed only where this is necessary to prevent fleeing, physical attack against an officer or a sentenced person, infliction of injuries to others, self-injuring or infliction of material damage, as well as where this is necessary to prevent resistance against a lawful order of an officer.

23. Under the Law on Interior Affairs,[6] which governs internal affairs, powers and duties of Ministry of Interior staff, as well as other relevant issues, the aim of police tasks is to ensure equal protection of security, rights and freedoms, implement laws and ensure the rule of law. In performance of their tasks, the police may use only such measures and means of coercion as are prescribed by law and as are capable of achieving the aim with the least harmful consequences. Police officers must act in accordance with the Constitution, ratified international treaties and other regulations. Police officers must observe the standards of police conduct, in particular those that stem from obligations set out in international instruments concerning the duty to serve people, respect legal provisions and suppress illegal activities, the realization of human rights, non-discrimination in the performance of police tasks, restrictions and restraint in the use of means of coercion, prohibition of torture and application of inhuman and degrading treatment, provision of assistance to those in need, obligation to safeguard confidential and personal data, obligation to refuse unlawful orders and zero tolerance of corruption. This Law catalogues means of coercion and lays down the conditions under which they can be applied (arts. 57–82).

24. Statistical data on cases of enforced disappearance in Montenegro – four cases of war crimes have been dealt with by courts in Montenegro, but none of these concerned enforced disappearance within the meaning of the Convention.

III. Implementation of each substantive article of the Convention

Article 1 – Prohibition of enforced disappearance

25. The Constitution of Montenegro guarantees human rights and freedoms. Guaranteed human rights and freedoms may be restricted only by law, within the limits prescribed by the Constitution and to such an extent as is necessary to meet the purpose for which the restriction is allowed in an open and democratic society. Measures of restriction may not

[6] *Official Gazette of Montenegro* 44/2012 and 36/2013.

operate beyond the state of war or emergency. No restrictions may be applied to the following rights: the right to life, right to legal remedy and legal aid; right to dignity and respect of a person; right to a fair and public trial and the principle of legality; presumption of innocence; right to defence; right to compensation for illegal or wrongful deprivation of liberty and wrongful conviction; freedom of thought, conscience and religion; right to marry. The following prohibitions may not be derogated from: the prohibition of provoking or encouraging hatred or intolerance; prohibition of discrimination; *ne bis in idem*; forced assimilation.

26. Under the Constitution, Montenegro guarantees inviolability of physical and mental integrity of the man, of his privacy and personal rights. No one may be subjected to torture of inhuman or degrading treatment. No one may be held in slavery or servitude (art. 28). Everyone has the right to liberty of person. Deprivation of liberty is allowed only for reasons and in accordance with a procedure prescribed by law, whereas unlawful deprivation of liberty is punishable.

27. Pursuant to the Criminal Code of Montenegro, imprisonment or abduction of persons followed by a refusal to acknowledge these acts in order to deny legal protection constitutes a criminal offence of crime against humanity established by article 427, within the body of criminal offences against humanity and other values protected under international law. An order to commit or direct commission of illegal deprivation of liberty and imprisonment during time of war, armed conflict or occupation constitutes a criminal offence of war crime against civilian population established by article 428 of the Criminal Code

28. Montenegro is a State party[7] to the Rome Statute of the International Criminal Court. The Law on Cooperation with the International Criminal Court[8] was passed in 2009.

Article 2 – Definition of enforced disappearance

29. Under article 9 of the Constitution of Montenegro, the definition of enforced disappearance contained in the Convention has become an integral part of national legislation following ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. The provisions of the Convention take precedence over national legislation and apply directly where they differ from the provisions of national legislation.

30. The Criminal Code of Montenegro includes a criminal offence of enforced disappearance within its body of criminal offences against humanity and other values protected under international law, namely in criminal offences of crimes against humanity (art. 427) and war crimes against the civilian population (art. 428).

Article 3 – Investigation

31. Under article 3 of the Convention, State parties must take appropriate measures to investigate acts of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. Pursuant to article 134 of the Constitution of Montenegro, prosecution of criminal and other offences prosecuted ex officio is the responsibility of the

[7] Law on Ratification of the Rome Statute of the International Criminal Court was published in the *Official Gazette of the Federal Republic of Yugoslavia – International Treaties* 5/2001.

[8] *Official Gazette of Montenegro* 53/2009.

State Prosecution Service, as a unified and independent State authority. The Service performs its duties on the basis of the Constitution, laws and ratified international treaties.[9]

32. The State Prosecution Service prosecutes perpetrators of criminal and other offences prosecuted ex officio, pursues legal remedies within its competence and performs other duties as provided for by law. For the purpose of prosecuting perpetrators of criminal and other offences, the Service has the power to define and take measures aimed at detection of criminal and other offences and their perpetrators together with other competent State authorities.[10]

33. As with other criminal offences, enquiries into and investigation of these criminal offences are carried out in accordance with the Code of Criminal Procedure. The Code also provides that the State prosecutor has the right and the duty to prosecute perpetrators of criminal offences. In accordance with article 44, the police and other law enforcement authorities are under a duty to execute requests from the competent State prosecutor.

34. The concept and types of police tasks are set out in the Law on Internal Affairs. These tasks include: protection of citizens and rights and freedoms guaranteed by the Constitution, prevention and detection of criminal offences and misdemeanours, tracking down perpetrators of criminal offences and misdemeanours and bringing them before competent State authorities, provision of conditions to detain persons and other tasks provided for by law (art. 10).

Article 4 – Establishing the criminal offence in national legislation

35. In line with article 4 of the Convention and article 7 of the Rome Statute of the International Criminal Court, the Criminal Code of Montenegro, within its body of criminal offences against humanity and other values protected under international law, in article 427 establishes a criminal offence of crime against humanity in the same terms:

Anyone who in violation of the rules of international law, as part of a widespread or systematic attack against civilian population, orders: murder, placing population or a part thereof under such living conditions so as to bring about their complete or partial extermination; enslavement; forced transfer of population; torture; rape; enforced prostitution; forced pregnancy or enforced sterilization with a view to changing the ethnic composition of population; persecution or expulsion on political, religious, racial, national, ethnic, cultural, sexual or any other grounds; imprisonment or abduction of persons followed by a refusal to acknowledge these acts in order to deny them legal assistance; oppression of a racial group or establishment of domination of one such group over another; or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to health; or anyone who commits one of the crimes listed above, shall be liable to imprisonment for a minimum term of five years or a sentence of imprisonment for forty years.

36. Incorporating this criminal offence into national legislation is in line with obligations stemming from the ratification of the Rome Statute of the International Criminal Court. The central element of this criminal offence is taking of acts as part of a widespread or systematic attack against the civilian population, which implies participation of or tolerance by the State or another political organization (i.e. organization with political power).

37. The criminal offence of a war crime against the civilian population set out in article 428 provides that anyone who in violation of the rules of international law in time of

[9] Article 2 of the Law on State Prosecution Service, *Official Gazette of the Republic Montenegro* 69/2003, *Official Gazette of Montenegro* 40/2008 and 39/2011.

[10] Articles 17 and 19 of the Law on State Prosecution Service, *Official Gazette of the Republic of Montenegro* 69/2003, *Official Gazette of Montenegro* 40/2008 and 39/2011.

war, armed conflict or occupation orders the taking of measures of intimidation and terror, hostage-taking, collective punishment, illegal deprivation of liberty and imprisonment is liable to imprisonment for a minimum term of five years. Conspiracy and incitement to commit genocide and war crimes is an autonomous criminal offence (art. 431), which carries a sentence of imprisonment of between three months and 15 years depending on the form of its commission. Failure to take measures to prevent crimes against humanity and other values protected under international law constitutes a criminal offence (art. 440) which carries a penalty ranging between two and 10 years.

Article 5 – Crimes against humanity

38. By way of the provision of article 9 of the Constitution, which prescribes precedence of ratified international treaties over national legislation and their direct application in case their provisions differ from the provisions of national legislation, as well as by way of the 2011 ratification of the Convention, Montenegro has confirmed that widespread or systemic commission of enforced disappearances constitutes a crime against humanity under governing international law and attracts consequences under international law.

39. This is further confirmed by criminalization of a crime against humanity which involves imprisonment and abduction in violation of the rules of international law, as part of a widespread or systematic attack against the civilian population (art. 427 of the Criminal Code).

Article 6 – Criminal responsibility

40. The Criminal Code of Montenegro is in line with this provision of the Convention. The criminal offence of a crime against humanity is committed by everyone who in violation of the rules of international law, as part of a widespread or systematic attack against the civilan population orders imprisonment or abduction of persons without acknowledging these acts in order to deny them legal protection. This criminal offence carries a minimum sentence of five years or sentence of imprisonment for 40 years, the latter being the most severe penalty under Montenegrin legislation.

41. Furthermore, under the Criminal Code of Montenegro, everyone who is a party to a criminal offence, including principals and co-principals, instigators and abettors (arts. 23–27), is liable to punishment. Under the Criminal Code, anyone who with intent commences the commitment of a criminal offence, but does not finish it, is liable to be punished for an attempted criminal offence where the offence is punishable under law by imprisonment of five years or more, whereas other attempted criminal offences are punishable solely when explicitly prescribed so by law. The use of a specific instrument or application of a specific modus operandi is also considered a commenced criminal offence if such instrument and modus operandi are defined by law as elements of a criminal offence. An attempt is punishable with the penalty prescribed for the intended criminal offence but a more lenient penalty may be imposed at discretion of the court (art. 20).

42. In accordance with the Convention, failure to take measures to prevent crimes against humanity and other values protected under international law constitutes a criminal offence. Namely, under article 440 of the Criminal Code, a military commander or a person de facto acting in this capacity who is aware that forces under his command or control are preparing or have already commenced the commission of criminal offences making part of the body of criminal offences against humanity and other values protected under

international law,[11] but fails to take necessary measures that he could have taken and had a duty to take in order to prevent the commission of such criminal offence and this results in the actual commission of that criminal offence, is liable to a penalty ranging between two and 10 years. If this criminal offence has been committed without intent, the perpetrator is liable to a penalty of up to three years.

43. Conspiracy and incitement to commit genocide and war crimes constitute a criminal offence. Namely, under article 431, everyone who conspires with another to commit any of the following criminal offences: genocide, crime against humanity, war crime, crime against civilian population, war crime against the wounded and the sick and war crime against prisoners of war is liable to a penalty ranging between three months and three years. Those who organize a group with a view to committing these criminal offences may be sentenced to imprisonment for a period between five to 15 years. An individual who becomes a member of the group may be sentenced to imprisonment for a period between one to eight years. Those who have committed this offence but have exposed the conspiracy or the group before they have committed a criminal offence as part of the group or for the group and those who have prevented the commission of the offence may be sentenced to a more lenient penalty. Everyone who calls for or incites the commission of the above noted criminal offences may be sentenced to imprisonment for a period between two to 10 years.

Article 7 – Penalties

44. In accordance with the Convention, and in view of the severity of this criminal offence, the penalty which may be imposed for the criminal offence of crime against humanity which covers enforced disappearances is imprisonment for a minimum of five years or imprisonment for 40 years, as the most severe penalty under Montenegrin legislation. Under general rules of determination of sentences set out in article 42 of the Criminal Code, the court determines the sentence within the confines set forth by law for the criminal offence concerned, taking into account the purpose of punishment and all factors that influence the penalty to be lesser or greater (mitigating and aggravating circumstances), and in particular: the degree of guilt, motives for which the offence has been committed, the degree to which the protected value has been harmed or threatened, circumstances under which the offence was committed, etc.

45. The July 2003 Amendments to the Criminal Procedure Code[12] introduced a special factor for determination of sentences for hate crimes. Namely, where a criminal offence has been motivated by hate due to one's race, religion, national or ethnic belonging, sex, sexual orientation or gender identity of another status, the court may take such circumstance as an aggravation, unless such circumstance is prescribed as an element of the primary or of a more serious form of the criminal offence under consideration.

46. With regard to mitigating circumstances within the meaning of article 7, paragraph 2, of the Convention, article 431, paragraph 4, of the Criminal Code provides that the court may impose a more lenient penalty on a perpetrator of criminal offences of genocide and war crimes (genocide, crime against humanity, war crime, crime against

[11] Genocide, crime against humanity, war crime, crime against civilian population, war crime against the wounded and the sick and war crime against prisoners of war, use of prohibited weapons, unlawful killing and wounding of enemies, unlawful taking of objects from those killed, violation of parliamentarians, cruel treatment of the wounded, the sick and the prisoners of war, as well as destruction of cultural heritage.

[12] Law on Amendments to the Criminal Procedure Code, *Official Gazette of Montenegro* 40/2013 of 13 August 2013.

civilian population, war crime against the wounded and the sick and war crime against prisoners of war) who exposes the conspiracy or the group before he has committed a criminal offence as part of the group or for the group, or a perpetrator who has prevented the commission of an offence.

47. With regard to aggravating circumstances within the meaning of article 7, paragraph 3, of the Convention, ordering or committing murder in time of war, armed conflict or occupation constitutes aggravated forms of war crimes, punishable by a more severe penalty.

48. Montenegro is a State party to the International Covenant on Civil and Political Rights and additional protocols thereto: the Optional Protocol to the International Covenant on Civil and Political Rights (*Official Gazette of the Federal Republic of Yugoslavia – International Treaties* 4/01) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ibid.).

Article 8 – Statute of limitations

49. Article 129 of the Criminal Code of Montenegro provides that prosecution and enforcement of penalty are not subject to statute of limitations in respect of criminal offences laid down in articles 401a, 422 through 424 and 426 through 431 of this Code,[13] and criminal offences for which no statute of limitations applies under ratified international treaties.

50. Montenegro is a State party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (New York, 1968) and the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (Strasbourg, France, 1974).[14]

Article 9 – Jurisdiction

51. In accordance with article 9 of the Convention, article 134 of the Criminal Code provides that criminal legislation of Montenegro applies to everyone who commits a criminal offence on its territory. Criminal legislation of Montenegro also applies to everyone who commits a criminal offence on board a ship registered in Montenegro, regardless of where the ship was located at the time of the commission of the criminal offence. Criminal legislation of Montenegro also applies to everyone who commits a criminal offence on board a Montenegrin civil or military aircraft, regardless of where the aircraft was located at the time of the commission of the criminal offence. Article 136 of the Criminal Code establishes the active personality principle of criminal jurisdiction, under which criminal legislation of Montenegro is applicable to nationals of Montenegro who commit outside of Montenegro a criminal offence other than those covered by the primary territorial principle. Moreover, criminal legislation of Montenegro is to be applied to a perpetrator who has become a national of Montenegro after the commission of the criminal offence. The reason for application of this principle is to prevent Montenegrin nationals from evading responsibility for criminal offences committed abroad by coming to

[13] Criminal offences: forming a criminal association, creation of a criminal organization, trading in influence, instigating trading in influence, accepting bribes, giving bribes, genocide, crime against humanity, war crime, crime against civilian population, war crime against the wounded and the sick and war crime against prisoners of war, conspiracy and incitement to commit genocide and war crimes.

[14] *Official Gazette of Montenegro – International Treaties* 11/2010.

Montenegro, since they cannot be extradited, save in exceptional cases, to another country. Special conditions for application of this principle, i.e. situations in which it will not be applied, are laid down in article 138, paragraphs 3 and 4. Article 137 provides for criminal jurisdiction of Montenegro where a criminal offence has been committed by a foreign national outside Montenegro. Accordingly, Montenegro may exercise its criminal jurisdiction over a foreign national who has committed a criminal offence against the State or its national outside Montenegro provided he is present in the territory of Montenegro or has been extradited to Montenegro. An exception to this rule are criminal offences established by article 135 (which are subject to the unconditional territorial principle).

52. Montenegro may exercise its criminal jurisdiction over a foreign national who has committed a criminal offence against another country or a foreign national outside Montenegro, provided that such criminal offence is punishable by imprisonment for a period of four or more years and that the perpetrator is present in the territory of Montenegro and is not extradited to another country. If otherwise not provided in this Criminal Code, the court may not impose a more severe penalty than the one prescribed by law of the country in which the criminal offence was committed.

53. Under the Law on International Legal Assistance in Criminal Matters,[15] provision of international legal assistance is governed by international treaties. Where there is no international treaty or some issues are not covered by an international treaty, international legal assistance is provided in accordance with this law, provided that there is reciprocity and that the other country could be expected to execute a letter rogatory of a Montenegrin judicial authority. International legal assistance covers extradition of defendants and convicted persons, transfer of prosecution and enforcement of foreign criminal decisions in criminal matters, as well as other forms of international legal assistance provided for by this law – delivery of legal instruments, written materials and other objects in connection with criminal proceedings in the requesting State; exchange of information, as well as execution of specific procedural actions; questioning of the accused, witness and expert witness, including questioning via video and telephone conference link, on-the-spot inquiry, search of premises and persons, seizure of objects, secret surveillance measures, joint investigation teams, provision of banking data, DNA analysis, temporary surrender of a person deprived of liberty for the purpose of his giving evidence as a witness; provision of penal records data and data regarding convictions and other procedural actions.

54. Montenegro maintains full international cooperation with other States with a view to preventing and ensuring efficient prosecution of all perpetrators of criminal offences.

55. Montenegro ratified the Rome Statute of the International Criminal Court in 2001[16] and passed the Law on Cooperation with the International Criminal Court in 2009.[17] Article 27 of the Rome Statute explicitly excludes the possibility of invoking immunity under national or international law. In this context, the Law provides for jurisdiction of the Montenegrin court for all perpetrators of war crimes if these crimes are committed in the territory of Montenegro or if either the perpetrator or the victim is the national of Montenegro. A Montenegrin court will also have jurisdiction in other cases regardless of territorial and personality jurisdiction if the perpetrator has been arrested in Montenegro or has been extradited to it, provided that criminal proceedings have not been conducted before the International Criminal Court or a court of another State. Criminal proceedings will not be conducted in Montenegro only if proceedings are already in progress before the

[15] *Official Gazette of Montenegro* 4/2008, 36/13.

[16] Law on Ratification of Rome Statute of the International Criminal Court, *Official Gazette of the Federal Republic of Yugoslavia – International Treaties* 5/2001.

[17] *Official Gazette of Montenegro* 53/2009.

International Criminal Court. In such a case, Montenegro will defer to jurisdiction of the International Criminal Court in accordance with the Statute and the law. Under this Law, arrest and surrender of the defendant are carried out on the basis of the request for surrender of the defendant to the International Criminal Court and are conducted in accordance with the Statute and this law.

Article 10 – Detention

56. Under the Constitution of Montenegro, a person who is reasonably suspected of having committed a criminal offence may be detained and kept in detention on the basis of a decision of the competent court only if this is necessary to ensure smooth conduct of criminal proceedings. A detained person must be provided with a reasoned decision at the time of being remanded to detention and no later than within 24 hours after being remanded to detention. A detained person may appeal this decision and the court must decide on this appeal within 48 hours. Detention must be used for the shortest possible period of time. Detention may last no longer than three months on the basis of a decision of the first-instance court, but a higher court may extend detention for another three months. The defendant must be released if no charges are brought within these time limits. Detention of minors may last no longer than 60 days.

57. With a view to safeguarding the rights of persons deprived of liberty, on the one side and the efficiency of criminal proceedings on the other, article 5 of the Code of Criminal Procedure provides that persons deprived of liberty by the competent public authority must be immediately informed in their language or in a language they understand about the grounds for deprivation of liberty and, at the same time, informed that they are not obliged to make a statement, that they have the right to a defence attorney of their own choosing and the right to request that a person of their choosing be informed of their deprivation of liberty, as well as a diplomatic and consular representative of a State whose nationals they are or a representative of an adequate international organization in case they are stateless persons or refugees. Persons deprived of liberty without a decision must be brought immediately before the competent State prosecutor, unless otherwise provided in this Code.

58. The duty to provide information about deprivation of liberty is also explicitly laid down in the Code of Criminal Procedure. Namely, under the Code, the police, the State prosecutor or the court must immediately or at the latest within 24 hours inform the family of the detained person or their common-law spouse of the deprivation of liberty, unless the detained person expressly objects thereto. The competent social welfare authority is informed about deprivation of liberty if measures should be taken to ensure care of children and other dependent family members (art. 180).

59. Detention may be ordered only under the conditions set forth in the Code of Criminal Procedure and only if the same purpose cannot be achieved by another measure, with detention being necessary for the smooth conduct of proceedings. All authorities taking part in criminal proceedings and authorities providing legal assistance have a duty to proceed with the utmost urgency if the accused person is in detention. Throughout the proceedings, detention must be terminated as soon as the grounds for which it was ordered cease to exist. Detention is ordered upon the request of the competent State prosecutor by a ruling issued by the competent court, after a previous hearing of the accused person. On the basis of the ruling of the investigating judge, the accused person may be kept in detention at most one month from the day of deprivation of liberty. After this term has expired, the accused person may be detained only on the basis of a ruling extending detention. Detention may be extended for no longer than two months at the reasoned motion of the State prosecutor. An appeal against the ruling of the panel is possible, but it does not stay the execution of the ruling. If proceedings are conducted for a criminal offence punishable

by imprisonment for a term of more than five years, the panel of the Supreme Court may for important reasons extend the detention for up to another three months at the reasoned motion of the State prosecutor. The accused person must be released if charges are not brought by the expiry of these time limits. During the course of investigation, the investigating judge may terminate detention at the motion of the State prosecutor or of the accused person or his defence counsel. An appeal against the ruling on release from detention does not stay the execution of the ruling. Before a decision is made on the motion of the accused person or his defence counsel to terminate detention, the investigating judge must seek an opinion of the State prosecutor (arts. 174–178).

60. Under the Law on International Legal Assistance in Criminal Matters and ratified international treaties, the court may remand a person against whom an international wanted notice has been issued to detention with a view to extradition. Under conditions set out in the Law, detention with a view to extradition may be imposed even before a letter rogatory of the requesting State is received, if that State requests so or if there is well-founded suspicion to believe that the person whose extradition is sought has committed an extraditable criminal offence. The investigating judge will release the person whose extradition is sought if reasons for detention no longer exist or if the requesting State has failed to submit a letter rogatory for extradition within the time limit he has set taking into account all factors, with the time limit not being shorter than 40 days as of the day when the person claimed was remanded to detention. Detention imposed on the basis of paragraph 1 of this article may be terminated if no letter rogatory is submitted within 18 days of the day when the person whose extradition is sought was remanded to detention. The Ministry of Justice, as the central communication authority for cases of international legal assistance, must promptly inform the requesting State of the time limits set by the investigating judge. Exceptionally, if there are justified reasons to do so, the investigating judge may, at the request of the requesting State, extend detention for no longer than 30 days (arts. 15 and 17).

61. With regard to extradition to Montenegro, the Law on International Legal Assistance in Criminal Matters provides that the Minister of Justice may submit a letter rogatory for extradition if criminal proceedings are conducted in Montenegro against a person located in another State or if the competent court in Montenegro has passed a sentence upon a person located in another State. The letter rogatory is communicated through the diplomatic channel. Where there is danger that the person sought might flee or hide, the Minister may, before taking action under this Law, request the provisional arrest of the person sought or taking of other measures aimed at preventing such person from fleeing (arts. 30–31).

62. Please see an explanation of application of article 17 in the section on supervision over detention below.

Article 11 – Obligation to prosecute and extradite

63. Montenegro has ratified key international extradition instruments, including the European Convention on Extradition,[18] the Additional Protocol to the European Convention on Extradition, the Second Additional Protocol to the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, its Additional

[18] Law on Ratification of the European Convention on Extradition, with Additional Protocols, *Official Gazette of the Federal Republic of Yugoslavia – International Treaties* 10/2001.

Protocol[19] and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.[20]

64. The procedure with regard to extradition of defendants and accused persons is governed by the Law on International Legal Assistance in Criminal Matters, except where an international treaty provides otherwise.

65. Under the Constitution of Montenegro, a Montenegrin national may not be expelled or extradited to another State, except where international obligations dictate otherwise (art. 12).

66. In accordance with article 6, paragraph 2, of the European Convention on Extradition, in case it does not extradite its national, Montenegro undertook to submit the case to its competent authorities at the request of the requesting party in order that proceedings may be taken if they are considered appropriate.

67. In accordance with article 11, paragraph 1, of the Convention regarding the possibility of submitting a person alleged to have committed an offence of enforced disappearance who is found in a State party to the competent authorities for prosecution in case it does not extradite that person, article 137, paragraph 2, of the Criminal Code of Montenegro provides that criminal legislation of Montenegro also applies to non-nationals who have committed a criminal offence against another country or a foreigner outside Montenegro punishable by imprisonment for four years or a more severe penalty under the law of the country in which the criminal offence was committed, provided that the alleged perpetrator is present in the territory of Montenegro and is not extradited to another State. If otherwise not provided by this Code, the court may not in this case impose a more severe penalty than the one provided for by the law of country in which the criminal offence was committed. Article 138 of the Code provides that in the case referred to in article 137, paragraph 2, if the criminal offence under consideration is the one considered a criminal offence under general legal principles recognized in international law at the time of commission, prosecution may be undertaken in Montenegro with the approval of the Chief State Prosecutor, regardless of the law of the country in which the criminal offence was committed.

68. Equality before law and fair trial – the Constitution guarantees the right to a fair and public trial as one of the rights of the individual. Everyone has the right to a fair public trial within a reasonable time by an independent and impartial court established by law. The Constitution of Montenegro prohibits any direct or indirect discrimination, on any grounds, including discrimination in access to a court between foreign natural and legal persons and nationals of Montenegro. The Constitution also guarantees to everyone the right to equal protection of their rights and freedoms. Rights and freedoms are exercised on the basis of the Constitution and ratified international agreements. Everyone is equal before the law, regardless of any particular distinction or status. Everyone has the right to address international organizations for protection of their rights guaranteed by the Constitution. Equal access afforded to Montenegrin and foreign natural and legal persons includes equality with regard to the right to legal aid guaranteed to everyone under the Constitution. Furthermore, the Constitution provides that trials are public and that judgement is pronounced publicly. Exceptionally, the public may be excluded from all or part of the trial for reasons that are strictly necessary in a democratic society and to the extent necessary: in the interests of morals; public order; where juveniles are on trial; where interests of the protection of the private life of the parties so require; in marriage disputes; in proceedings

[19] *Official Gazette of the Federal Republic of Yugoslavia - International Treaties* 10/2001.

[20] Ibid. 2/2006.

concerning guardianship or adoption; for the purpose of protecting military, business or official secrets and for protection of security and defence of Montenegro.

69. These constitutional principles, i.e. guaranteed rights, as elements of the right to a fair trial are set out in more detail in the Law on Courts, the Law on Civil Contentious Procedure, Code of Criminal Procedure, Law on Civil Non-Contentious Procedure, Law on General Administrative Procedure, Law on Bankruptcy and Law on the Protection of the Right to a Trial Within a Reasonable Time, in accordance with the Constitution and relevant international fair trial standards. The right to a fair trial in administrative dispute procedure is governed by the provision of the Law on Civil Contentious Procedure and Law on Courts.

70. Under the Law on Courts, the fundamental principles of courts' work include independence and autonomy, mandatory character and accessibility of courts, equality of parties, public nature and impartiality. In accordance with these principles, the judge adjudicates cases autonomously and impartially. The office of the judge may not be performed under anybody's influence. No one may influence the judge in the performance of his office. The court is under a duty to decide on the legal matter under its competence lawfully, objectively and in a timely manner. Everyone has the right to address the court for realization of their rights. The work of courts is public, except where otherwise provided by law. Everyone has the right to an impartial trial within a reasonable time and to a randomly selected judge, regardless of the parties to and the nature of the case. Furthermore, organization of the courts under the Law on Courts ensures that citizens may avail themselves of this right as the court network is set up in a way that allows swift and simple access to court. Under the Law on Courts everyone with a justified interest has the right to inspect court files. As a result of this, judgements are public and accessible.

Article 12 – Efficient investigation

71. In line with article 12 of the Convention, the principle of legality of prosecution constitutes one of the fundamental principles of criminal procedure set forth in article 19 of the Code of Criminal Procedure. Under this principle, the State prosecutor is under a duty to undertake prosecution if there are reasonable grounds to believe a certain person has committed a criminal offence prosecuted ex officio, unless otherwise provided for in this Code.

72. The Code of Criminal Procedure sets forth the duty to report a criminal offence. Pursuant to article 254, persons acting in an official capacity and responsible persons in State authorities, local self-government authorities, public companies and institutions must report criminal offences prosecuted ex officio of which they have been informed or of which they have learned in the performance of their office. In addition, the Code provides that everyone should report a criminal offence which is prosecuted ex officio and must report a criminal offence against a minor (art. 255). A report of a criminal offence may be lodged with the competent State prosecutor in writing or orally. If the report is lodged orally, the person filing it must be cautioned as to the consequences of false reporting. If the report has been lodged with the court, the police or a State prosecutor lacking competence, they have a duty to receive the report and immediately forward it to the competent State prosecutor. If there are grounds to believe that a criminal offence prosecuted ex officio has been committed, the police must inform the State prosecutor and take necessary measures at their own initiative or at the request of the State prosecutor with a view to discovering the perpetrator, preventing the perpetrator or an accomplice from fleeing or hiding, discovering and securing traces of the criminal offence and items which may serve as evidence, and to gathering all information which could be useful for conducting criminal proceedings successfully. The Code provides that investigation is conducted on the strength of an order

of investigation and against a specific person where there is a well-founded suspicion that the person has committed a criminal offence. During the course of investigation, such evidence and data are gathered as are necessary for the State prosecutor to take a decision as to whether to bring charges or discontinue the investigation, and evidence for which there is a risk they may not be available for presentation at the main hearing or whose presentation may involve difficulties, as well as other evidence which may be of use for proceedings and which presentation is opportune in consideration of the circumstances of the case (art. 274).

73. In line with article 12, paragraph 4, of the Convention, the Criminal Code of Montenegro within its body of criminal offences against the judiciary establishes a criminal offence of obstruction of evidence (art. 390). Namely, anyone who gives, offers or promises a gift or another benefit to the witness or expert witness or to another participant before the court or another State authority or uses force or threat against that person with the intention that this person influence the outcome of the proceedings by giving a false statement or by not giving a statement is liable to imprisonment for a term of six months to five years. Anyone who, with the intention to prevent or hinder the collection of evidence, hides, destroys, damages or partially or completely makes useless someone else's document or other objects serving as evidence is liable to a fine or imprisonment for a term of up to one year.

74. With regard to witness protection, it should be noted that the Law on Witness Protection[21] governs conditions and procedures for provision of out-of-court protection and assistance to a witness, where reasonable fear exists that testifying for the purpose of giving evidence about criminal offences, in connection with which the protection may be provided under this Law, would expose the witness to actual and severe danger to life, health, corporal inviolability, freedom or property of large scale, and other measures of protection are not sufficient. At the request of the witness, protection and assistance may also be provided to a person close to him. Criminal offences against humanity and other values protected under international law are listed as criminal offences for which protection is possible under this Law (art. 5).

Article 13 – Extradition

75. Conditions for extradition of defendants or accused persons are laid down in the Law on International Legal Assistance in Criminal Matters. Article 12 of this Law provides that extradition may not be granted for a political criminal offence, criminal offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention on Extradition. However, this article also provides that this prohibition does not cover criminal offences of genocide, crimes against humanity, war crimes and terrorism.

76. With a view to creating conditions for firmer, more binding and more efficient cooperation with the countries from the region in the fight against all types of crime, and in particular against organized crime, Montenegro has entered into extradition treaties with the Republic of Serbia (2009, revised in 2010), Republic of Croatia (2010), the Former Yugoslav Republic of Macedonia (2011) and Bosnia and Herzegovina (2013). At the time of writing, the procedure to ratify the Additional Bilateral Treaty to the European Convention on Extradition of 13 December 1957, aiming to facilitate the implementation of the Convention between Montenegro and the Republic of Italy, is ongoing (the Treaty was signed on 25 July 2013).

[21] *Official Gazette of the Republic of Montenegro* 65/2004.

77. Since all extradition treaties entered into by Montenegro include provisions to the effect that extradition will be granted for criminal offences punishable under law of both States by imprisonment or a measure that involves deprivation of liberty for a period of no less than one year (Croatia, the Former Yugoslav Republic of Macedonia), and in the case of the Extradition Treaty with Serbia also for criminal offences against humanity, national legislation is harmonized with article 13 of the Convention.

78. Article 22 of the Law on International Legal Assistance in Criminal Matters provides that the Minister will not grant extradition of a person enjoying the right of asylum in Montenegro or if there are reasonable grounds to assume that, if extradited, the person whose extradition is sought would be subjected to persecution or punishment because of his race, religion, nationality, belonging to a specific social group or because of his political convictions or that his position would be made worse because of any of these reasons.

Article 14 – International legal assistance

79. Efficient judicial cooperation in criminal matters is one of the key challenges in the efforts to prevent and suppress criminal activity. Effective mechanisms for the fight against these phenomena must include efficient regulatory and institutional frameworks. Capacity-building of judicial and law enforcement authorities remains a priority for Montenegro in the context of European and Euro-Atlantic integrations, which are foreign policy priorities for the country.

80. In Montenegro, the provision of international legal assistance in criminal matters is governed by bilateral and multilateral treaties, as well as by the Law on International Legal Assistance in Criminal Matters and the Criminal Procedure Code.

81. Legal assistance in criminal matters is governed mostly by bilateral treaties that also cover international legal assistance in civil matters, this being the case with 16 States. Separate bilateral treaties on criminal matters are concluded with seven States. Some of these treaties also govern extradition of defendants and accused persons, whereas separate extradition treaties have been concluded with nine States. Taking of prosecution (transfer of proceedings) is provided for in eight bilateral treaties. Bilateral treaties on legal assistance in civil and criminal matters with eight States include provisions on taking of and waiving and desisting from prosecution (transfer of proceedings). Broader and more detailed provisions on transfer of proceedings are contained in treaties on international legal assistance in criminal matters with four States. Enforcement of foreign criminal judgements, as a new trend in international criminal law, is covered by separate bilateral treaties with seven States.

82. With a view to creating conditions for firmer, more binding and more efficient cooperation with the countries from the region at the bilateral level in the fight against all types of crime, and in particular against organized crime, Montenegro has entered into extradition treaties with the Republic of Serbia (2009, revised in 2010), the Republic of Croatia (2010) and the Former Yugoslav Republic of Macedonia (2011).

83. Montenegro is also a State party to relevant multilateral conventions in this field, including the Council of Europe and United Nations conventions. All this taken together provides necessary facilities for the broadest forms of provision of legal assistance in criminal matters.

84. With a view to providing the broadest basis for international judicial cooperation, following the July 2013 amendments to the Law on Legal Assistance in Criminal Matters,[22] forms of provision of international legal assistance are comprehensively provided for so as to include extradition of defendants and accused persons, taking of and waiving and desisting from prosecution, enforcement of foreign court decisions, as well as other forms of international legal assistance (delivery of legal instruments, written materials and other objects in connection with criminal proceedings in the requesting State; exchange of information, as well as taking of specific procedural actions; questioning of the defendant, witness and expert witness, including questioning via video and telephone conference link, on-the-spot inquiry, search of premises and people, seizure of objects, secret surveillance measures, joint investigative teams, provision of banking data, DNA analysis, temporary surrender of a person deprived of liberty for the purpose of his giving a statement, provision of penal records data and data on convictions and other procedural actions).

85. Being resolved to achieve the highest standards in the system of provision of international legal assistance, Montenegro does not condition international legal assistance in criminal matters on the existence of a bilateral or jointly binding multilateral treaty. Namely, article 2 of the Law on International Legal Assistance in Criminal Matters provides that provision of international legal assistance takes place on the basis of an international treaty or on the basis of this Law where there is no such treaty or the treaty does not cover specific issues, either on condition of reciprocity or on condition that the requesting State can be expected to execute a letter rogatory of a Montenegrin judicial authority.

Article 15 – International cooperation

86. As stated under the reply with regard to article 14 of the Convention, governing regulations in Montenegro provide the basis for the greatest measure of international legal assistance. At the time of writing, the competent authorities in Montenegro have received no letters rogatory from another State to provide assistance to victims of enforced disappearance, locate and release disappeared persons, nor have the competent authorities of Montenegro sent any letters rogatory to such effect to other States.

Article 16 – Non-refoulement

87. Montenegro holds the principle of prohibition of return in relation to enforced disappearances to be particularly important. This principle is incorporated into national legislation not only through the Convention, but also through international and regional instruments that mandate States not to expel, return, surrender or extradite a person to another State where there are substantial grounds for believing that such person would be in danger of being subjected to enforced disappearance.

88. When deciding on an individual case of extradition, the competent authorities in Montenegro take all relevant factors into consideration, including the possible existence of systematic, grave, evident or mass violation of human rights in the State requesting extradition. In process of development of the Law on International Legal Assistance in Criminal Matters regard was had to the provisions of the Council of Europe conventions, and in particular to those of the European Convention on Extradition.

[22] Law on Amendments to the Law on International Legal Assistance was passed by the Assembly of Montenegro on 9 July 2013 (*Official Gazette of Montenegro* 36/2013).

89. The Law on International Legal Assistance in Criminal Matters governs the conditions and procedure for provision of international legal assistance in criminal matters. Extradition of defendants and sentenced persons is requested and carried out in accordance with this Law, if otherwise not provided in an international treaty. Article 12 of this Law provides that extradition may not be granted for a political criminal offence, criminal offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention on Extradition. However, this article also provides that this prohibition does not cover criminal offences of genocide, crimes against humanity, war crimes and terrorism. If under the law of the requesting State, the criminal offence for which extradition is sought carries the death penalty, extradition may be granted only if the requesting State provides guarantees that the death penalty will not be pronounced or executed (art. 14). This Law provides that the Minister will not grant extradition of a person enjoying the right of asylum in Montenegro or if there are reasonable grounds to assume that, if extradited, the person whose extradition is sought would be subjected to persecution or punishment because of his race, religion, nationality, belonging to a specific social group or because of his political convictions or that his position would be made worse because of any of these reasons. The Minister will not grant extradition if the person whose extradition is sought was not afforded the right to have a defence counsel (art. 22). Under the Law, where extradition is granted, the person whose extradition is granted may not be prosecuted for another offence committed before extradition, nor may a penalty more severe than the one imposed be applied. Also such person may not be extradited to a third State for a criminal offence committed before extradition without the consent of the competent Montenegrin authority. The consent is not needed where the person whose extradition is granted gave a statement in proceedings before the investigating judge to the effect that he did not object to prosecution, application of a more severe penalty or extradition to a third country for a criminal offence committed before extradition – a rescinding statement. The rescinding statement is given on record in accordance with the Criminal Procedure Code, in a manner which guarantees that the person whose extradition is sought gave the statement voluntarily and was aware of its consequences. Once given, the rescinding statement cannot be revoked.

90. Moreover, Montenegro has acceded to the European Convention on the International Validity of Criminal Judgments[23] (Council of Europe, CETS No. 070).

Article 17 – Prohibition of secret detention

91. Montenegro protects rights and freedoms and everyone has a duty to respect the rights and freedoms of others. The prohibition of secret detention is a principle guaranteed by the Constitution of Montenegro, as the supreme legal act of Montenegro. Under this principle, everyone has the right to personal liberty and may be deprived of liberty only for the reasons and following the procedure provided for by law. A person deprived of liberty must immediately be informed of the reasons for deprivation of liberty and, at the same time, informed that he is not obliged to make any statement. At the request of a person deprived of liberty, the competent authority must inform a person of his choosing of the deprivation of liberty. A person deprived of liberty has the right to a have a defence attorney of his own choosing present at interrogation. Furthermore, the Constitution of Montenegro expressly prohibits unlawful deprivation of liberty (art. 29).

[23] Law on Ratification of the European Convention on the International Validity of Criminal Judgments, *Official Gazette of Montenegro – International Treaties* 6/2009.

92. Under the Constitution of Montenegro, a person may be remanded to and kept in detention only on the basis of a decision of the competent court if there is reasonable suspicion that he committed a criminal offence and only if this is necessary for the purpose of conducting criminal proceedings (art. 30). Under the Constitution, a person unlawfully or wrongfully deprived of liberty or wrongfully convicted is entitled to compensation (art. 38).

93. Montenegro also confirmed its commitment to protection of human rights and freedoms by introducing the Protector of Human Rights and Freedoms – an Ombudsman-type institution. Under the Constitution, the Protector of Human Rights and Freedoms (Ombudsman) is a separate and independent authority responsible for taking measures aimed at protection of human rights and freedoms. The Law on the Protector of Human Rights and Freedoms of Montenegro[24] defines the Protector as the national mechanism for protection of persons deprived of liberty from torture and other cruel, inhuman or degrading treatment or punishment. In addition to the competencies and powers it had under the previous law and also has under the current law, the Protector is entrusted with taking measures for prevention of torture and other types of cruel, inhuman or degrading treatment or punishment (torture prevention) under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In carrying out the functions of the national mechanism for prevention of persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment, the Protector cooperates directly with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A Deputy Protector for Torture Prevention was appointed in July 2012.

94. The principle of prohibition of secret detention is also affirmed in the Criminal Procedure Code. Under the Code, detention may be ordered only under the conditions set forth in this Code and only if the same purpose cannot be achieved by another measure, and detention is necessary for the smooth conduct of proceedings. All authorities taking part in criminal proceedings and authorities providing them with legal assistance are under a duty to proceed with exceptional urgency if the accused person is in detention. Throughout the proceedings, detention is to be terminated as soon as the grounds for which it was ordered cease to exist (art. 174). Pursuant to article 176 detention is ordered upon the motion of the competent prosecutor by a ruling issued by the competent court, after a previous hearing of the accused person. The Code expressly lays down reasons for detention (art. 175), ordering and length of detention during investigation, release from detention, ordering and control of detention, obligation to provide information about detention immediately, and no later than within 24 hours from the deprivation of liberty, unless the detained person expressly objects. The Code governs the duty to respect the personality of a detained person and lays down rules governing his accommodation, rights, correspondence and visits and other procedures concerning detention.

95. In accordance with article 185 of the Criminal Procedure Code, the authorized President of the Court carries out supervision over detainees. The President of the Court or a judge designated by him shall visit detainees at least twice a year, and if they find it necessary, even without the presence of supervisors and guards, they inform themselves about the manner in which the detainees are fed, about the fulfilment of other needs and the manner in which they are treated. The President or the judge designated by the President is under a duty to undertake measures necessary for the removal of flaws noticed during the prison visit and to report on the visit to the President of the Supreme Court and the report is delivered to the ministry competent for the affairs of the judiciary. The President of the

[24] *Official Gazette of Montenegro* 42/11.

Court and the investigating judge may visit detainees at any time, talk to them and hear their complaints.

96. The Law on Enforcement of Criminal Sanctions also affirms the prohibition of secret detention by providing that the sentenced person enjoys the protection of fundamental rights as laid down in the Constitution, this Law and international treaties. In the enforcement of a sanction, a criminal offender may be deprived of or restricted only to specific rights to the extent that corresponds to the nature and content of such sanction and in a manner which ensures the respect for the personality of the offender and his human dignity (art. 14a). Article 14b of this Law sets forth the prohibition of acts subjecting the sentenced person to torture, abuse and degradation, medical and scientific experiments. Prohibited acts are primarily those that are disproportionate to the maintenance of order and discipline within an organization or an organizational unit or are unlawful and cause suffering or inadequate restrictions of the sentenced person's rights. A sentenced person who is a victim of prohibited acts has the right to compensation.

97. The Law on Enforcement of Criminal Sanctions expressly provides for the duty of the organization and institutions for enforcement of penal sanctions to keep prescribed records and statistics on persons serving sanctions and persons in detention (art. 6). The Law on Enforcement of Criminal Sanctions and by-laws enacted in its furtherance deal with admission of detained persons, establishment of their identity, etc. In this context the Rulebook on detailed rules for enforcement of detention provides that the identity of the sentenced person is established on admission on the basis of the data available in the decision on detention and by inspection of his identification card, passport or other adequate documents. If a detained person does not have documents or if his identity is uncertain, the prison management may ask the investigating judge to provide information necessary to establish the identity of the detained person.

98. The main register of information on a detained person contains at a minimum: citizen's unique identification number, date and time when the person was admitted to prison; father's name and first name, date of birth, place, municipality and the state in which the person was born, domicile or residence, nationality, occupation, name and article of the criminal offence, name of the court which ordered detention (number and date of the decision), information about the indictment, date and time of release from prison, name of the court which authorized the release from detention (number and date of the ruling), date of referral to another organizational unit.

99. General medical examination of a detained person must be carried out within 24 hours from admission. A detained person must be provided with adequate health care immediately after admission if there is a need to provide such care or if the detained person requests so. When the prison physician finds that a detained person is suicidal, such person will be stripped of the items with which he could commit suicide and placed under other suitable monitoring measures. A medical file is created for a detained person, which includes all data concerning his health status on admission, during the course of detention and on release from prison. In accordance with article 12 of the Rulebook, health care and other medical services during detention are provided by the health-care service of the Institute or by the prison physician. If so approved by the investigating judge, a detained person may be examined by a physician of his own choosing within the limits of house rules. Such examination is made at the request of the detained person, who also bears the expenses associated therewith. If so needed, the investigating judge may monitor the examination or designate a person to carry out monitoring on his behalf. At the proposal of the prison physician, if so approved by the investigating judge or the chairman of the trial panel, the detained person may procure pharmaceuticals at his own expense.

100. Surgical and other medical interventions on a detained person may be undertaken only at the proposal of the prison physician and a specialist physician with the prior consent

of the detained person or the consent of the parent or caretaker if the detained person is a minor. In urgent cases, the director of the prison may refer a detained person to an adequate health facility at the proposal of the prison physician. The investigating judge or the chairman of the trial panel must immediately be informed of this referral. The prison physician has the duty to keep separate records of detained persons receiving methadone treatment. Medical and dental examinations of detained persons are performed in the prison health-care centre during working hours and in urgent cases even outside regular working hours at the order of the director of the prison. The detained person must report to the prison health officer and security officer, who must keep records on this. The prison physician and dentist must keep records of examinations performed by updating the medical file and register of examinations performed on a daily basis. The prison doctor must describe the observed situation and flaws in the register of visits of the prison health service. The flaws must be immediately communicated to the director of the prison.

101. Electronic records of persons held in police custody have recently been introduced alongside written records for the purpose of keeping records of all persons held in police custody by documenting the identity of persons held in custody, date, time and location, identifying the authority which ordered custody, the grounds for custody, date and place of admission to the institution where the person is held in custody, health status on admission, as well as changes in the health status, time and place of interrogation accompanied with information on the names of authorized persons who have taken over the person held in custody, as well as the date and time of release from premises where the person was held in custody or of transfer to another detention facility. At present, written records of persons held in custody kept in all branches and local stations of the Police Directorate provide a high-quality and accurate overview of all necessary data.

102. Mandatory psychiatric treatment and confinement in a health facility are one of the security measures provided for by the Criminal Code of Montenegro. The purpose of this measure is to remove the conditions and circumstances which might influence an offender to commit criminal offences in the future. The court may impose this measure where conditions to impose this measure as laid down in this Law are met. The court imposes mandatory psychiatric treatment and confinement in an appropriate medical institution to an offender who has committed a criminal offence in a state of significantly reduced mental capacity if it ascertains that in consideration of the committed offence and the state of mental disturbance there is a serious danger that the offender could commit a more serious criminal offence and that medical treatment in such an institution is necessary for the purpose of eliminating this danger. If these conditions are met, the court orders mandatory treatment and confinement in a medical facility to an offender who has committed an unlawful act that the law defines as a criminal offence while in the state of mental incapacity. The court discontinues this measure once it ascertains that the need for treatment and confinement of the offender in a medical institution has ceased. The measure that is imposed together with an imprisonment sentence may last longer than the imprisonment. The time that an offender, who has committed a criminal offence in a state of significantly reduced mental capacity and who has been sentenced to imprisonment, has spent in a medical institution is credited against the imposed sentence. If the period spent in a medical institution is shorter than the length of the imposed sentence, once the security measure is terminated, the court orders that the convicted person be sent to serve the remaining sentence or be released on parole. When deciding about the release on parole, the court particularly gives consideration to how successful the convicted person's treatment was, his health condition, the time spent in a medical facility and the remaining sentence that the offender has not served, in addition to the conditions referred to in article 37.

103. Under the Law on Enforcement of Penal Sanctions, the health facility or ward to which a person has been referred to for treatment and confinement, is under a duty to report to the court which ordered the measures about the health of the person at least once a year.

When the treatment ends, the health facility informs the first instance court which imposed the security measure of this. If the treatment has ended but the person in question has not served the sentence in full, the administrative authority responsible for internal affairs at whose territory the health facility is located escorts the sentenced persons to serve the sentence at the request of the first-instance court (art. 80).

104. The Ministry of Justice performs control over the lawfulness of serving of security measures of mandatory psychiatric treatment and confinement in a health facility.

105. Under the Law on Non-Contentious Proceedings (arts. 44–53),[25] the court also decides about forced placement of a mentally ill person in a suitable psychiatric facility, where this is necessary to restrict the freedom of movement of such persons or his contacts with the outside world, and about release when the reasons for placement have been resolved. These proceedings are urgent and must be completed within eight days. The right of the mentally ill person to the protection of his human dignity, physical and psychological integrity must be observed during the placement procedure and his personality, privacy, moral and other convictions respected. When a mentally ill person is placed in a psychiatric facility for treatment without his consent or without a court decision, the facility is under a duty to report the placement within 48 hours to the court in whose territory it is located.

106. A report of the psychiatric facility must include a decision of a psychiatrist on forced confinement accompanied with appropriate documentation, in accordance with the Law on Protection and Exercise of Rights of Mentally Ill Persons (*Official Gazette of the Republic of Montenegro* 32/05). The report referred to in article 46 of this Law is not necessary where a mentally ill person is confined to a psychiatric facility on the basis of a decision made in proceedings to declare him incompetent or in criminal or misdemeanour proceedings. The proceedings are conducted ex officio as soon the court receives a report from a psychiatric facility or learns otherwise of a person confined to a psychiatric facility without his consent. When the court is satisfied that a person should be placed in a psychiatric facility, it determines the period of confinement, which may not be longer than 30 days from the day when a psychiatrist made a decision on forced placement. This decision is communicated to the guardianship authority. The psychiatric facility has a duty to report to the court on the health status of the confined person.

107. A person placed in a psychiatric facility must undergo necessary treatment measures. However, he or his representative must give consent to each measure that might put his life in danger or change his personality. During the course of confinement in a psychiatric facility, a mentally ill person should be allowed to maintain contacts with the outside world by receiving visits, exchanging correspondence and using the telephone.

108. If a psychiatric facility finds that a mentally ill person should remain in treatment after the expiry of the period determined by the court, it must submit a proposal to this effect within seven days before the expiry of the forced placement ordered by the court. The extended placement may last no longer than three months, whereas each next extension may not be longer than six months.

109. The court may decide, even before the expiry of the confinement period provided that the psychiatric facility submits a proposal to this effect, to release a mentally ill person from a psychiatric facility if it is satisfied that his health status has improved to such an extent that his further confinement is not justified.

110. A decision on placement in and release from a psychiatric facility may be appealed by the psychiatric facility in which a mentally person is placed, the mentally ill person,

[25] *Official Gazette of the Republic of Montenegro* 27/006.

guardian or temporary representative or the guardianship authority within three months from the day on which they received the decision. An appeal does not stay the execution of the decision unless the court decides otherwise for justified reasons. The first-instance court forwards the appeal accompanied with case files to the second-instance court without delay. The second-instance court must make a decision within eight days from the day when it received the appeal. Repeated proceedings ordered by the second-instance court must result in a decision within eight days.

Article 18 – Information on persons deprived of liberty

111. As noted above in the explanations with respect to articles 10 and 17 of the Convention, the Constitution of Montenegro provides for a duty of an authority to inform a person, chosen by the person deprived of liberty, of the deprivation of liberty if the person deprived of liberty so requests (art. 29).

112. Article 5 of the Code of Criminal Procedure provides that persons deprived of liberty by the competent public authority must be immediately informed in their language or in a language they understand about the grounds for deprivation of liberty and, at the same time, informed that they are not obliged to make a statement, that they have the right to a defence attorney of their own choosing and the right to request that a person of their choosing be informed of their deprivation of liberty, as well as a diplomatic and consular representative of a State whose nationals they are or a representative of an adequate international organization in case they are stateless persons or refugees. Persons deprived of liberty without a decision must be brought immediately before the competent State prosecutor, unless otherwise provided in the Code. Under the Code, the police, the State prosecutor or the court must immediately or at the latest within 24 hours inform the family of the detained person or their common-law spouse of the deprivation of liberty, unless the detained person expressly objects thereto. The competent social welfare authority is informed about deprivation of liberty if measures should be taken to ensure care of children and other dependent family members (art. 180).

113. In the context of consular protection, it should be noted that Montenegro is a State party to the Vienna Convention on Consular Relations[26] of 24 April 1963. Article 36 of the Convention provides for the duty of the competent authorities to inform the consular post of the sending State if a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner, if he so requests; the duty to forward any communication addressed to the consular post by the person arrested, in prison, custody or detention without delay; the duty to inform the person concerned without delay of his rights; and the right of consular officers to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation.

Article 19 – Protection of personal data

114. The protection of personal data is guaranteed by the Constitution of Montenegro. The Constitution prohibits the use of personal data for purposes other than those for which they were collected. Under the Constitution, everyone has the right to be informed of the data collected about him and to court protection in the case of misuse.

[26] *Official Gazette of the Socialist Federal Republic of Yugoslavia – Addendum* 5/1996.

115. The protection of personal data in Montenegro is provided under conditions and in the manner laid down by the Law on Personal Data Protection,[27] in accordance with principles and standards contained in ratified international human rights treaties and generally recognized rules of international law. This Law provides that personal data must be processed in a fair and lawful manner and only to an extent necessary to achieve the purpose of processing and in a way compatible with their purpose. Under this Law, protection of personal data is provided to every individual, regardless of nationality, domicile, race, skin colour, sex, language, religion, political or other belief, ethnicity, social origin, property, education, social position or other personal attributes (art. 4). The processing of personal data relating to criminal offences, criminal or misdemeanour penalties or security measures may be carried out only by or under the supervision of the competent State authority, provided that measures to safeguard personal data are ensured in accordance with the law (art. 14).

116. With respect to medical and genetic data, the types, contents and the manner of keeping data collections in the area of health care, as an element of consolidated health-care statistics, as well as the collection, processing, use, protection and storing of data from these collections are governed by the Law on Health-Care Data Collections.[28] In accordance with article 6 of the Law, the issues of collection, processing and revealing data contained in data collections are governed by the Law on Personal Data Protection and the law governing statistical research.

117. The collection, use, processing and storing of genetic data obtained through genetic examinations and analyses of genetic samples performed for medical purposes, types of genetic examinations, genetic counselling and provision of information, as well as other information with respect to genetic examinations, protection and use of data obtained through such examination are performed in accordance with the Law on Protection of Genetic Data.[29] This Law provides that the procedure of genetic examination and collection of genetic samples and their sources may be performed only in authorized health facilities (art. 6).

118. The collection and processing of personal and other data by the police are allowed to the extent that they are necessary for the purpose of performing police tasks and implementation of police powers with a view to suppressing and maintaining public peace and order (art. 37 of the Law on Internal Affairs).

119. With respect to the protection of these data in criminal proceedings, article 284 of the Code of Criminal Procedure provides that where the interests of criminal proceedings, interests of keeping information secret, interests of public order, morals or protection of personal or family life of the injured party or the accused so require, the person acting in an official capacity who is taking an evidential action must order the persons who are being heard or who are present while taking evidential actions, or who inspect the files of the investigation, to keep as secret certain facts or data they have learned and must advise them that any disclosure of a secret constitutes a criminal offence. This order is entered into the record on the evidential action or entered in the files being inspected, along with the signature of the person cautioned.

[27] *Official Gazcite of Montenegro* 79/2008, 70/2009 and 44/2012.
[28] Ibid. 80/2008, 40/2011.
[29] Ibid. 25/2010.

Article 20 – Restrictions to the right to information

120. A reply relating to the right to information under article 20 is provided in explanations given for articles 17 and 18 of the Convention.

121. In accordance with article 20, paragraph 2, of the Convention, the Constitution of Montenegro provides that everyone has the right to a legal remedy against a decision on his rights or an interest based on law. The right to a legal remedy cannot be restricted even in cases where the Constitution allows temporary restriction of rights.

122. For more details about the right to a legal remedy, please see the reply with respect to article 22 of the Convention above.

Article 21 – Release of persons

123. The Rulebook on detailed rules for enforcement of detention[30] provides that a detained person is released from prison on the grounds of a decision terminating detention and an order for release of a detained person. On release, the prison physician examines the detained person for the purpose of ascertaining his health status at that moment. The prison physician then draws up a report, which is entered into the medical file of the detained person. On release, the detained person is handed his items kept in prison. The handing over and receipt of items are verified by the officer handing over the items and the detained person who receives the items and money.

124. Under the Law on Enforcement of Criminal Sanctions and the Rulebook on house rules for enforcement of prison sentences, sentenced persons are released from prison on the day when their penalty expires. If the last day of the penalty is a Sunday or a national holiday, the sentenced person is released on Saturday or the last working day before the national holiday. If a detained person is seriously ill and therefore unable to travel at the time of release, the organization will place him in the nearest health facility for treatment. If a detained person has no means to pay treatment expenses, these expenses will be borne by the organization for the first month. At the time of release, the detained person is examined for the purpose of ascertaining his health status. Information about health and physical ability is entered into the medical file of the detained person. Before the release, the organization ascertains whether the detained person needs any help and has a duty to inform the administrative authority responsible for social welfare of its findings.

125. In accordance with the Rulebook on house rules for enforcement of prison sentences, the Department for admission, release and records of sentenced persons checks whether the release procedure was carried out in accordance with the law and the Rulebook and drafts a written report on a template developed for this purpose, which is then entered into the personal file of the sentenced person. The sentenced person being released is provided with a release slip. The Institute informs of the release the competent court and administrative authority responsible for police affairs which has jurisdiction over the place of domicile or residence of the sentenced person.

[30] Ibid. 42/2012.

Article 22 – Measures to prevent and impose sanctions for delaying or obstructing the remedies, failure to record the deprivation of liberty and refusal to provide information on the deprivation of liberty of a person

126. In Montenegro, the right to a legal remedy is one of the mechanisms to provide legal satisfaction to the victim (in addition to the right to a complaint, right to compensation of damages and the right to submit a claim under the property law).

127. Article 20 of the Constitution of Montenegro provides that everyone has the right to a legal remedy against a decision on his rights or an interest based on law. Moreover, the right to a legal remedy cannot be restricted even in cases where the Constitution allows temporary restriction of rights (art. 25).

128. Since non-observance of guaranteed rights represents a substantial violation of procedural provisions and thus of the right to a fair trial, regular and extraordinary judicial remedies may be filed in this case. Regular legal remedies include: the appeal against a decision of the first-instance court, the appeal against a decision of the second-instance court and the appeal against a ruling; extraordinary legal remedies include: the repetition of criminal proceedings, the extraordinary mitigation of a sentence and the request to protect lawfulness.

129. The Ministry of Justice performs control over the lawfulness of enforcement of imprisonment through an authorized officer. In performing control, an authorized officer has the right to inspect general and individual acts, records and other documents relating to sentenced persons, while the organization is under a duty to facilitate smooth performance of control by the officer.

130. In accordance with the Law on Enforcement of Criminal Sanctions, the officers of the Institute for Enforcement of Criminal Sanctions are amenable to the regulations on civil servants if otherwise not provided in the Law. Failure to act in accordance with the Law and the Rulebook, i.e. untimely and improper keeping of records, untimely submission and submission of incomplete and incorrect data to the Ministry of Justice carries a fine ranging from 50 to 750 euros.

Article 23 – Training of the competent authorities

131. In accordance with article 23 of the Convention, representatives of judicial authorities and law enforcement authorities regularly attend conferences, seminars and workshops in all areas.

132. Since 2008, the Judicial Training Centre has organized seven seminars/workshops/conferences on various human rights topics with an emphasis on humanitarian law:

Seminars

133. In 2008, with the support of the Council of Europe, the Judicial Training Centre organized a seminar for Montenegrin judges and prosecutors who are trainers for the European Convention on Human Rights. The seminar focused on articles 3 and 5 of the European Convention on Human Rights. That same year, in cooperation with the Centre for Democracy and Human Rights (CEDEM), OSCE and the London-based AIRE Centre (Advice on Individual Rights in Europe), the Judicial Training Centre organized a seminar for judges and prosecutions on the prohibition of torture and unlawful deprivation of liberty under the European Convention on Human Rights.

134. In 2011, within the framework of IPA 2009 Support to the Implementation of the New Criminal Procedure Code Twinning Project, implemented through partnership between Montenegro and the Republic of France, training on criminal procedure code measures that might violate human rights was organized for holders of judicial office from the northern region of Montenegro (September) and the southern region of Montenegro (November). The topics examined at the training included: restrictions to human rights and freedoms during investigation: police detention (conditions and course), search, confiscation of items and proceeds, provision of information to prosecutor by the police, restrictions regarding respect of human dignity and physical integrity (medical examinations), unlawful restrictions of human rights and freedoms, etc.

135. That same year, within the framework of the Justice and War Crimes Project, financed by the European Union and implemented through partnership between OSCE-ODIHR (OSCE Office for Democratic Institutions and Human Rights); ICTY (International Tribunal for the Former Yugoslavia) and UNICRI (United Nations Interregional Crime and Justice Research Institute), a regional round table for judicial training institutions was organized in cooperation with the Judicial Training Centre. The purpose of the Justice and War Crimes Project is to strengthen the judicial systems of the region to handle very complex war crimes cases in accordance with international standards.

136. In 2012, in cooperation with CEDEM and the London-based AIRE Centre, the Judicial Training Centre organized a workshop on the European Convention on Human Rights (ECHR) and criminal legislation. The workshop was supported by the Embassy of the United States of America in Podgorica, the OSCE Mission to Montenegro and the Embassy of the United Kingdom of Great Britain and Northern Ireland in Podgorica. The aim of the workshop was to contribute to strengthening of institutional capacities of the Montenegrin judiciary, by facilitating harmonization of national criminal legislation and practice with the European standards. Specific topics discussed at the workshop included: prohibition of torture and inhuman treatment under Montenegrin legislation and practice; effective investigation of alleged torture and inhuman treatment; detention under the European Convention with special emphasis on practice and amendments to criminal procedural legislation in the Republic of Serbia; interactive analysis of case law – case studies: Montenegro and Serbia; introduction to key concepts of articles 3, 6 and 8 of the ECHR; prohibition of torture and inhuman treatment under article 3 of the ECHR; procedural rights under article 3 of the ECHR – effective investigation; admissibility of evidence and illegally obtained evidence in Montenegrin legislation and practice; admissibility of evidence under article 6 of the ECHR, illegally obtained evidence under article 8 of the ECHR and evidence obtained in violation of article 3 of the ECHR.

Conferences/international workshops

137. Representatives of the Chief State Prosecutor's Office, Special Prosecutor's Office for Organized Crime, Corruption, Terrorism and War Crime attended the Regional Conference on the heritage of the International Tribunal for Former Yugoslavia and influence on the countries of the region in 2009. The Conference was organized by the Law Faculty of Zagreb University in cooperation with the Judicial Academy of the Ministry of the Republic of Croatia and non-governmental organizations.

138. In 2011, representatives of Montenegrin courts participated in an international workshop for judges implementing law on refugees. The workshop was organized as a cooperative effort of the Ministry of Justice of Bosnia and Herzegovina and the Office of the United Nations High Commissioner for Refugees (UNHCR), with the support of the European Commission (TAIEX). It brought together Western Balkans judges dealing with the judicial review of asylum cases for the purpose of exchanging best practices, knowledge and experiences.

139. A two-day meeting on medical ethics and health care in prisons took place in 2013 in Montenegro. The meeting, organized by the Ministry of Justice of Montenegro and the Council of Europe, examined inter alia the following topics: the Council of Europe and Committee for Prevention of Torture (CPT) standards in the area of medical ethics and the rules for provision of health care in prisons; mental health, evaluation of medical needs in prisons; medical examination on admission, medical consultations and documentation, etc.

Article 24 – Rights of victims

140. With regard to the definition of "victim" contained in article 24, paragraph 1, of the Convention, article 24 of the Montenegrin Code of Criminal Procedure provides that "injured party" means a person whose personal or property right has been violated or put at risk by a criminal offence.

141. As explained in the reply with respect to article 17 of the Convention, article 6 of the Constitution of Montenegro provides that Montenegro guarantees rights and freedoms, that rights and freedoms are inviolable and everyone must respect the rights and freedoms of others. The principle of truth and fairness is one of the fundamental principles of criminal procedure. Under this principle, the court, public prosecutor and other State authorities participating in criminal proceedings must truthfully and fully establish all facts relevant to pass a lawful and fair decision, and examine and establish, with equal attention, facts that incriminate the accused and the ones in his favour.

142. The Code of Criminal Procedure provides for in-court measures for protection of witnesses from intimidation, special methods for participation and examination of witnesses, which also apply as appropriate to interrogation of the defendant in criminal proceedings (arts. 120–124). With regard to how decisions are communicated in criminal proceedings (judgements, rulings and orders), if otherwise not provided in the Code, decisions are communicated orally to persons with a legal interest in them, if such persons are present or by serving their certified transcript if such persons are absent (art. 191).

143. As a democratic State based on the rule of law, Montenegro aspires to ensure that the independence and efficiency of its competent authorities guarantees as quick as possible resolution of criminal offences. Montenegro is also a candidate country for membership in the European Union and its reform efforts are thus particularly focused on the promotion and protection of human rights and freedoms.

144. The right to compensation of damage suffered as result of unlawful actions is guaranteed by the Constitution of Montenegro. Namely, article 38 of the Constitution provides that a person who was unlawfully or wrongfully deprived of liberty or wrongfully convicted is entitled to compensation from the State.

145. Under the Law on Contracts and Torts,[31] anyone who has inflicted damage to another has the obligation to compensate the damage, unless it is proved that the damage was inflicted through no fault of his own (art. 148). Within the meaning of this Law, damage means depreciation of someone's property (actual loss) and the prevention of its increase (loss of future earnings), infliction of physical or psychological pain or fear on another, as well as violation of personal dignity or reputation of a legal person (non-material damage) (art. 149). Under the Law, everyone has the right to request the court or another competent authority to have any action violating the integrity of human personality, personal or family life and other rights of his personality, as well as the reputation of a legal person, curtailed (art. 151). Articles 164–167 provide for responsibility of a company or an

[31] Ibid. 47/2008.

entrepreneur, other persons and a legal person for damage inflicted by its body. These provisions ensure adequate protection in cases where an employee inflicts damage to a third person during the course of work or in connection with work by providing that the employer bears responsibility except where otherwise provided in the law (if the person who inflicted damage proves that he acted rightly). Article 200 provides that a person who has caused someone's death has the obligation to compensate regular costs of the funeral. Such person is also under a duty to compensate costs of medical treatment of injuries inflicted and other necessary costs associated with treatment, as well salaries lost due to the inability to work.

146. Compensation of damage in case of bodily injury or worsened health is governed by article 202, which provides that a person who has inflicted a bodily injury to another or has worsened his health, is under a duty to compensate costs of treatment and other necessary costs associated therewith, as well as salaries lost due to the inability to work during treatment. If the injured person is losing salary, or if his needs have permanently increased or if prospects for his further development and advancement have been shattered or decreased, the responsible person has the obligation to pay the injured person regular instalments in the specified amount. In addition to the above noted material damage, the same law provides for compensation of non-material damage (arts. 206–212). Monetary compensation is awarded for physical pain suffered, for psychological pain suffered due to lessened work activity, worsened physical appearance, violation of reputation, honour, freedom or rights of the personality, death of a close person and for fear. If the court is satisfied that the circumstances of the case, in particular the intensity of pain and fear and their duration, so justify, it awards just compensation, regardless of compensation of material damage, as well as in the absence thereof. In the case of death of a person, the court may award members of his family (spouse, children and parents) just compensation for their psychological pain. Such compensation may be awarded to brothers and sisters if they lived together with the deceased over a longer period of time. In the case of grave disability of a person, the court may award his spouse, children and parents just compensation for their psychological pain. This compensation may also be awarded to the common-law spouse if he lived together with the deceased over a longer period of time. Parents who have lost a conceived, but unborn child are entitled to just compensation.

147. With respect to the work of the police, a person who thinks that his freedoms and rights have been violated or that he has suffered damage as a result of the performance of police tasks has the right to court protection and compensation of damage, in accordance with the Law on Interior Affairs (art. 17).

148. The Code of Criminal Procedure provides that a person who was unlawfully or wrongfully deprived of liberty or wrongfully convicted is entitled to rehabilitation, the right to compensation of damage by the State, as well as other rights laid down by law (art. 13). The right to compensation of damage for wrongful conviction belongs to a person against whom a binding criminal sanction was imposed or who was declared guilty but freed from serving the sentence, and subsequently, as a result of an extraordinary legal remedy, the new proceedings were irrevocably discontinued or the convicted person was acquitted by a binding judgement or the charge was rejected, except where:

(a) Proceedings were discontinued or the judgement rejecting the charge was passed because in the new proceedings the subsidiary prosecutor or private prosecutor waived the prosecution, provided that the waiver occurred by way of an agreement with the accused;

(b) In new proceedings the charge was dismissed by a ruling because the court lacked jurisdiction and the authorized prosecutor assumed prosecution before the competent court;

(c) A convicted person or an acquitted person is not entitled to compensation of damage he caused criminal proceedings to be conducted through a false confession in the preliminary investigation or otherwise, or caused his conviction through such statements during the proceedings, unless he was forced to do so;

(d) In the case of conviction for concurrent criminal offences, the right to compensation of damage may also relate to individual criminal offences in regard to which the conditions to award compensation were met.

149. The rules on responsibility for damage that is based exclusively on objective circumstances, i.e. on wrongful conviction and wrongful deprivation of liberty, are provided for in the law. This is a result of the desire to protect the rights and property of the man, his personal dignity and personal freedom. Detention is considered wrongful when proceedings have been discontinued or have ended in a binding judgement of not guilty or a judgement rejecting the charge. A wrongful deprivation of liberty or wrongful conviction may result in material or non-material damage. The court assesses the amount of compensation for both material and non-material damage. In accordance with the established case law, compensation ranging from 3,000 and 4,000 euros, depending on circumstances laid down in the Law on Contracts and Torts, is awarded for each month of wrongful detention.

150. Montenegro ratified the European Convention on the Compensation of Victims of Violent Crimes[32] in 2009. The Convention entered into force for Montenegro on 1 July 2010. The ratification of the Convention has created the legal basis for adoption of a separate law governing compensation of victims of intentional violent crimes. In this context, the Government Programme for 2013 envisages the development of a bill on compensation of victims of criminal offences. In keeping with the principles of the Convention, this bill will provide for the right to monetary compensation of victims of intentional violent crimes and lay down the conditions and procedure for the realization of the right to compensation, designate authorities responsible for conducting the procedure and deciding on the right to compensation and the authorities to handle cross-border cases and the procedure that applies in such cases.

151. The above noted provisions and measures to protect the rights of victims of enforced disappearance have not been applied in Montenegro as no criminal proceedings have been conducted in relation to enforced disappearances within the meaning of the Convention.

152. With respect to the right to form associations concerned with attempting to establish the circumstances of enforced disappearances and to assist victims of enforced disappearance referred to in article 24, paragraph 7, of the Convention, it should be noted that the freedom to form associations is protected by the Constitution. The Constitution guarantees freedom to form and participate in political, trade union and other associations, without the approval and following registration with the competent authority. No one may be forced to be a member of an association. The State supports political and other associations where there is a public interest to do so (art. 53).

153. The establishment, registration and removal from the register, funding and other issues that have a bearing on the work and functioning of non-governmental organizations are governed by the Law on Non-Governmental Organizations.[33]

154. The Council for Cooperation between the Government of Montenegro and Non-Governmental Organizations[34] was established in 2010 with a view to promoting

[32] Ibid. – *International Treaties* 6/2009.

[33] *Official Gazette of Montenegro* 39/2011.

cooperation between the Government of Montenegro and non-governmental organizations. The Council is inter alia tasked with strengthening the relationship and cooperation between the Government of Montenegro and non-governmental organizations with a view to improving the quality of life and work of the citizens; facilitating the creation of institutional mechanisms for cooperation and development of partnerships; supporting participation of relevant non-governmental organizations in public policy development and implementation and in discussions on legislation, strategies and programmes. The Council has a chairman, who is a government representative, and 24 members.

Article 25 – Protection of children

155. Under Montenegrin law, the mother and the child enjoy special protection, guaranteed by the Constitution (arts. 71–73) and a number of other pieces of legislation. The Constitution provides that the child enjoys the rights and obligations that are adequate to his age and maturity and is guaranteed special protection from physiological, physical, economic or any other type of exploitation or abuse (art. 74).

156. The Criminal Code of Montenegro provides for a number of criminal offences in the area of preventing and sanctioning unlawful removal of children. In this context, the Code (art. 217) provides for the criminal offence of removal of a child. Namely, anyone who unlawfully keeps or removes a child from his parent, adoptive parent, guardian, other person or an institution who has custody rights, or prevents enforcement of a decision awarding custody to a particular person is liable to a fine or an imprisonment sentence of up to two years. Anyone who prevents enforcement of a decision of the competent authority stipulating the manner of maintaining personal relations between a child and his parent or another relative is liable to a fine or an imprisonment sentence of up to one year. Where the offence was committed for gain or other base motives or if health, education or schooling of a child is seriously endangered as its result, the offender is liable to an imprisonment sentence ranging from three months to five years. Change of the family status is also a criminal offence. Under the Code, anyone who changes the family status of a child by deception, switching or in some other manner is liable to an imprisonment sentence ranging from three months to three years. Anyone who unintentionally changes the family status of a child by switching the children or in some other manner is liable to an imprisonment sentence of up to one year. An attempt at this criminal offence is also punishable (art. 218).

157. With a view to protecting children from adoption in violation of the binding legislation, the Criminal Code of Montenegro provides for a separate criminal offence of trafficking in children for the purpose of adoption. Namely, article 445 provides that anyone who removes a child for the purpose of adoption in violation of the binding legislation or anyone who adopts such a person or mediates in such adoption or anyone who for that purpose buys, sells or surrenders another person who has not reached the age of 14 or transports, provides accommodation for or conceals such a person is liable to an imprisonment sentence ranging from one to five years. Anyone who habitually carries out these activities or participates in their organized commission together with other persons is liable to an imprisonment sentence of no less than three years.

158. In the context of article 25, paragraph 1, of the Convention, it should be noted that the Criminal Code of Montenegro provides for the criminal offence of illegal crossing of the State border and smuggling of people. Namely, article 405, paragraph 2, provides that anyone who deals with illegal transfer of other persons across the border of Montenegro or

[34] Decision on the establishment of the Council for Cooperation between the Government of Montenegro and Non-Governmental Organizations, *Official Gazette of Montenegro* 28/2010.

enables for gain another person to illegally cross the border, or to illegally stay or transit is liable to an imprisonment sentence ranging from three months to five years. In line with the Convention, a graver form of this offence exists if it was committed by several persons in an organized manner, through abuse of office or in a manner that endangers the life or health of persons whose illegal border crossing, stay or transit is enabled or if a large number of people are smuggled. In this case, the offender is liable to an imprisonment sentence ranging from one to 10 years.

159. For the purpose of ensuring legal certainty, the Criminal Code of Montenegro provides for criminal offences against legal traffic (arts. 412–415). In accordance with article 25, paragraph 1 (b), of the Convention, Montenegrin criminal legislation provides for criminal offence of falsification of a document. Anyone who creates a false document or issues a false document or changes a real document with the intention to use it as a real one or anyone uses such false or untruthful document as a real one or obtains it for use is liable to an imprisonment sentence of up to three years. If the offence referred to in paragraph 1 of this article was committed with respect to a public document, a will, bill of exchange, cheque, public or official records or other records that must be kept under law, the offender is liable to an imprisonment sentence ranging from three months to five years. An attempt at this criminal offence is also punishable. In addition to this offence, the Code provides for special cases of falsification of documents, namely criminal offences of falsification of a document attesting official capacity and instigation to certify false content.

160. Under the Family Law of Montenegro[35] in all activities concerning the child the best interest of the child must be the primary consideration. Furthermore, the State has the duty to respect and promote the rights of the child and take all necessary measures to protect the child from neglect, abuse and exploitation (art. 5). This Law sets forth the rights of the child to know who are his parents, to live with parents and the right to be cared for by parents before anybody else, to maintain personal relationship with the parent he does not live with, to be provided with best possible living and health conditions for proper and full development, the right to education in accordance with abilities, wishes and leanings and other rights, which might be restricted in accordance with the law (arts. 61–68). The Law governs, inter alia, the family status of the child, relationship between parents and children, adoption, care and guardianship.

161. The Family Law provides that a child capable of forming his own views has the right to freely express those views. The child has the right to be timely provided with all information he needs to form his views. Views of the child must be given due consideration in all matters that affect him and in all proceedings in which his rights are decided on, in accordance with the age and maturity of the child. A child aged 10 and older may freely and directly express his views in all proceedings in which his rights are decided on. A child aged 10 and older may, either on his own or with the assistance of another person or institution, address the court or administrative authority and request assistance in the realization of his right to freely express his views. The competent authority establishes the child's views through an informal discussion at a suitable place, in cooperation with the school psychologist or the guardianship authority, family counselling service or another institution specialized in family relations and in the presence of a person chosen by the child.

162. If Montenegro received a request of another State to provide assistance in searching for, identifying and locating children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children

[35] *Official Gazette of Montenegro* 1/2007.

born during the captivity of a mother subjected to enforced disappearance, it would deal with such request in responsible and timely fashion.

163. As already noted at the beginning of the reply on the implementation of this article of the Convention, under Montenegrin law, the family, the mother and the child enjoy special protection, guaranteed by the Constitution and other regulations, and international instruments on the rights of the child Montenegro is a State party to – 1989 Convention on the Rights of the Child;[36] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict[37] and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.[38]

IV. List of key international human rights instruments binding on Montenegro

164. Montenegro is a State party to the key international human rights instruments, including:

- International Covenant on Civil and Political Rights (together with its Optional Protocol)
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- International Covenant on Economic, Social and Cultural Rights
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (together with its Optional Protocol)
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women (together with its Optional Protocol),
- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Convention on the Rights of Persons with Disabilities (together with its Optional Protocol)
- International Convention for the Protection of All Persons from Enforced Disappearance
- Convention on the Prevention and Punishment of the Crime of Genocide
- Protocol amending the Slavery Convention
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

[36] *Official Gazette of the Socialist Federal Republic of Yugoslavia – International Treaties* 15/90 and *Official Gazette of the Federal Republic of Yugoslavia – International Treaties* 4/96 and 2/97.

[37] *Official Gazette of the Federal Republic of Yugoslavia* 7/2002.

[38] Ibid.

- Convention relating to the Status of Refugees (together with its Protocol)
- Convention relating to the Status of Stateless Persons
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity,
- International Convention on the Suppression and Punishment of the Crime of Apartheid
- International Convention against Apartheid in Sports
- United Nations Convention against Transnational Organized Crime (together with its Protocols)
- Rome Statute of the International Criminal Court.

165. Montenegro has completed the procedure of confirmation of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Instruments of ratification of these instruments will be deposited in September 2013.

166. Montenegro is a State party to 69 International Labour Organization conventions, including eight key conventions. It is also a party to the following human rights conventions of the Hague Conference on Private International Law: Convention on the Civil Aspects of International Child Abduction, Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, and Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

167. Montenegro ratified a number of Council of Europe human rights conventions, including the most significant ones – the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), Framework Convention for the Protection of National Minorities, European Charter for Regional or Minority Languages and Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

V. Summary

168. Montenegro has been a State party to the International Convention for the Protection of All Persons from Enforced Disappearance since 20 October 2011 (*Official Gazette of Montenegro – International Treaties* 8/2011).

169. Article 29 of the Convention provides for the duty of the State parties to submit to the Committee on Enforced Disappearances, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under the Convention, within two years after the entry into force of the Convention. Montenegro is under a duty to submit the initial report on the implementation of the Convention by 20 October 2013.

170. The initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance has been prepared in accordance with the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention, adopted by the Committee at its second session (26–30 March 2012).[39] The report has been prepared by the Ministry of Justice in cooperation

[39] CED/C/2.

with the Supreme Court of Montenegro, Ministry of Interior, Ministry of Defence, Ministry of Health, Ministry of Labour and Social Welfare, Ministry of Foreign Affairs and European Integration, Police Administration and Judicial Training Centre.

171. The initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance provides an overview of the general legal framework under which enforced disappearances are prohibited, implementation of each substantive article of the Convention and the degree of harmonization, as well as a list of the key international human rights instruments binding on Montenegro. The report provides information on judicial, administrative and other authorities responsible for securing the rights set forth in the Convention. It also presents good practices and positive examples of specific activities undertaken by the competent authorities with a view to promoting and ensuring exercise and protection of fundamental rights.

172. As a Member State of the United Nations, Council of Europe and other international organizations and regional initiatives and a State party to the key international human rights instruments, Montenegro clearly demonstrates its support to the attainment of their goals, and also actively participates in the creation and implementation of new standards for the promotion and protection of human rights.

173. As a result of Montenegro's strategic commitment to continuous improvement of the rule of law, the legal framework and the system of protection of human rights and freedoms of its citizens aimed at meeting the criteria for full-fledged membership in the European Union, great progress in the realization of fundamental rights has been achieved through the implementation of a range of obligations.

174. The Constitution of Montenegro[40] guarantees human rights and freedoms. Rights and freedoms are realized on the basis of the Constitution and ratified international agreements, including the International Convention for the Protection of All Persons from Enforced Disappearance. The Constitution provides that Montenegro guarantees the dignity, security, inviolability of the physical and mental integrity of the man, and his privacy and individual rights. Under the Constitution, no one may be subjected to torture or inhuman or degrading treatment or held in slavery or servitude (art. 28). Article 29 of the Constitution provides that everyone has the right to liberty of person. Deprivation of liberty is allowed only for reasons and in accordance with a procedure prescribed by law.

175. Under article 9 of the Constitution of Montenegro, the definition of enforced disappearance contained in the Convention has become an integral part of national legislation following ratification of the International Convention for the Protection of All Persons from Enforced Disappearance.

176. Pursuant to the Criminal Code of Montenegro, imprisonment or abduction of persons followed by a refusal to acknowledge these acts in order to deny legal protection constitutes a criminal offence of crime against humanity established by article 427, within the body of criminal offences against humanity and other values protected under international law. An order to commit or direct commission of illegal deprivation of liberty and imprisonment during time of war, armed conflict or occupation constitutes a criminal offence of war crime against civilian population established by article 428 of the Code.

177. To the Government's knowledge, no criminal proceedings have been conducted in Montenegro for enforced disappearance within the meaning of the Convention.

[40] *Official Gazette of Montenegro* 1/2007, 38/2013.

178. The initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance will be submitted to the Committee on Enforced Disappearances, through the Secretary-General of the United Nations, whereupon it will be considered at a session of the Committee in Geneva.